

**MEETING OF THE RAIL SERVICE COMPETITION COUNCIL**  
**Monday, August 14, 2006 10:00 AM**  
**Elks Lodge, 137 Main**  
**Shelby, Montana**

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**COUNCIL MEMBERS PRESENT:** Mike O'Hara, Carla Allen, Rep. Tom McGillvray, Sen. Ken Hansen, Russell Hobbs, Doug Miller, Larry Bonderud, Evan Barrett, Jim Lynch. Contract Staff: Terry Whiteside (Whiteside & Associates) and Gloria O'Rourke.

**COUNCIL MEMBERS ABSENT:** Nancy K. Peterson, Dan Bucks, Bill Fogarty

**GUESTS PRESENT:** Steve Sheldon, Patrick Christiaens, Sen. Glenn Roush, Gerald Smith, Barbara Ranf, George Paul, Dennis DeVries, Margaret McGillvray, Mark Cole, Mary Ann Fiehrer, Edith Clark, Gary Aklestad, Jerry Black, Darin Arganbright, Barbara Iverson, Dwaine Iverson, Byron Kluth, Barbara Simonetti, Dick Turner, Jim Sargent, Mark Daniels, Art Adamson, Gary Schlaeger, Patty Schlaeger.

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**1.0 Call to Order**

**2.0 Roll Call and Introduction of Audience**

Chairman O'Hara called the meeting to order and expressed appreciation to the Shelby meeting hosts and to the public in attendance. A roll call was taken and it was determined that a quorum was present.

**3.0 Approval of Council Meeting Minutes – June 28, 2006**

The motion was made by Larry Bonderud to approve the minutes of the June 28<sup>th</sup> RSCC meeting; Evan Barrett seconded the motion. All voted in favor to approve the minutes.

**4.0 Technical Assistance Update – Whiteside and Associates**

**4.1 Proposed survey of shipper issues in central Montana**

Due to shipping problems in the Triangle area and other areas across Montana during harvest, it was suggested by Chairman O'Hara that the council consider commissioning a survey of producers/merchandisers to quantify these problems.

It was also suggested additionally to commission a survey to ascertain the changes that have occurred in transportation costs from the farm to elevator facilities as the railroad has moved to encourage shuttle facilities resulting in ever more distant hauls. The survey could analyze the average hauling the growers are incurring to get to shipping points and provide for comparison the average hauling incurred prior to the introduction of the shuttle loading facilities. It is common knowledge that costs are increasing, but there are no solid numbers gathered for measurement purposes and public policy discussions. A formal study would provide a factual predicate for the increased hauling and related costs associated with the transfer of grain to ever more distant grain loading facilities by Montana farm producers.

A discussion on the issue determined that the survey would address two separate issues: 1.) the shipper's experience during this harvest and 2.) Cost of transportation as producers haul farther and farther to elevators. The second part of the survey would attempt to ascertain the cost to the highway system to handle these increasingly more distant loads.

It was determined that Whiteside and Associates would conduct the survey and modeling under its current contract. Data could be used from Montana Department of Agriculture, MDOT, MACo, tax roles, and the Surface Transportation Board. Terry Whiteside, hearing the requirements for the first time, thought that depending on information and support already available, the survey could probably be completed within 90 days.

Rep. Tom McGillvray moved to conduct the survey/modeling and to request the services of Whiteside and Associates under the current contract. Carla Allen seconded the motion.

Discussion: Whiteside and Associates will develop the survey and work with RSCC members on the questions contained therein prior to actually conducting the survey. Once the survey/modeling is completed and information has been gathered, the Council will attempt to develop action items based on the data.

The motion passed unanimously.

#### **4.2 Determining Parameters for Competition Analysis (Terry Whiteside)**

Note: to view the entire PowerPoint presentation and full details visit:

<http://www.rscmt.gov/presentation081406.ppt>

Terry reminded the Council of the parameters described in HB 769 for the RSCC to:

- Promote Rail Service Competition in State and
- Develop a comprehensive and coordinated plan to increase rail service competition in MT
  - Taxation, means to assist impacted shippers,
  - Feasibility of legal structure to facilitate growth in producer transportation investment coop & rural transportation infrastructure
  - Partnerships with other states and federal agencies to promote rail service competition
  - Provide advice and recommendations to MT DOT

With these parameters in mind, Terry presented an outline to begin discussion of the RSCC vision and purpose to promote rail service competition in the state:

- Work with Montana transportation providers to enhance options and choices
- Build or encourage rail-to-rail competition projects – build outs or build ins
- Develop value added activities and projects which utilize product that traditionally moves over MT transportation system
- Develop projects that provide for competitive uses of MT products off rail or on competitive railroad systems
- Work with MT companies to enhance their ability to provide value added economic development

Terry also suggested six future strategies for transportation in Montana:

1. Explore and develop all rail or truck competitive options
2. Support all efforts at the local, state and federal level to increase choices in rail transportation
3. Support establishment of core rail branch lines and develop methods of financial and shipper support that will serve to minimize public expenditures
4. Develop lines of communication with all major transportation providers that serve Montana
5. Develop methodologies to lower transportation input costs in Montana
  1. Increase competition for use of MT products that move over MT transportation system
  2. Examine Tax rates on railroads and truck lines?
  3. Tort reform for settlements of lawsuits (use extreme care to avoid unintended consequences)
  4. Weight Limits?
  5. Demonstration projects for trucks
  6. Building transportation infrastructure that will lower transportation costs for MT producers and manufacturing
6. Litigate/participate on development of transportation issues  
(transportation corridors, abandonments, ex parte, etc) when necessary

Discussion: It is all about developing choices throughout the transportation arena for the producers to select how they want to move their product.

The RSCC members present decided to create two subcommittees to work with Whiteside and Associates, one on taxation (working with Dan Bucks) and one on transportation to bring recommendations back to the full committee. These recommendations would provide work product for the development of planks for building the required plan. In addition, both committees will contribute to the Survey Questions.

Purpose(s) of the Taxation Subcommittee: Reevaluate state's taxation practices to ensure reasonable competition while minimizing any transfer of tax burden. Include goals, objectives and strategies.

Purpose(s) of the Transportation Subcommittee: To develop RSCC strategies that will be utilized to develop and pursue joint projects with transportation providers and transportation users that provide for a gain in capacity, increased flexibility and deliver increased choices to transportation consumers of the Montana transportation system. The idea is to provide a benefit to all Montana industries. The work of this Committee will include development of goals, objectives and strategies that meet with goals of HB769.

Gloria O'Rourke is to survey via email the RSCC members to obtain names of those willing to serve on the committees.

#### **4.3 Discussion of Surface Transportation Board decisions**

Note: Upon Evan Barrett's request, agenda item 4.4 was discussed prior to 4.3.

Terry Whiteside reported on the Surface Transportation Board's Notice of Proposed Rule Making (NPR) for Simplified Standards for Rail Rate Cases. There are three types of rate cases proposed in the new NPR – small, medium and large. The small rate case will utilize a three factor benchmark for adjudicatory purposes. The medium rate cases will utilize a standard called Simplified Stand-Alone Cost (SSAC) that will apply to the majority of non-coal cases. This new standard would take at least 18 months to litigate and there is uncertainty as to method, cost and results of the SSAC.

Most troubling with the new regulations is the fact that the Bright-Line eligibility threshold is well below shipper recommendations. The bottom line is the rate case for small rate cases is so small it, in all probability, will not be applicable to any entity in Montana. This coupled with the estimate of litigation costs will, in all likelihood lead to no small rate cases being filed under the proposed rules. Remember, these are proposed rules and the small rate case rail customers are looking to file joint comments calling for major changes in the threshold of these standards.

The rule making schedule is as follows:

- Sept. 1: Notify STB of intent to participate
- Sept. 29: File opening comments
- Oct. 30: File reply comments
- Dec. 1: File rebuttal comments

Evan Barrett asked Terry to comment on the likelihood that the proposed changes at STB would prove useful to Montana. Terry said in his professional judgment, there is nothing in the new proposed rules that would prove useful for small rate cases from Montana rail customers. No small shipper would file as there is too much uncertainty and the qualifications are so low that no rail customer would see a possible return in a victory that would justify filing a case in the first place.

Terry also reported on an STB Notice of Proposed Rule Making in Rail Fuel Surcharges. The proposed changes would force railroads to tie surcharges more closely to actual changes in fuel costs associated with individual rail movements. Railroads also would be required to file monthly reports disclosing fuel costs, fuel consumption and revenue from surcharges.

The STB also called for abandoning the widely used method of setting fuel surcharges as a percentage of base shipping rates, which vary depending on the level of competition. Instead, the agency proposed requiring railroads to devise an alternative method, such as mileage or combination of weight and mileage.

#### **4.4 Update on Federal Legislation**

In addition to the STB activities mentioned above, Terry reported on the two rail competition bills including S 919 with ten cosponsors and HR 2047 with 36 cosponsors that are working their way through Congress. While these bills have support from a very large coalition of rail customers all across the country, no action has yet been taken in this Congress on the bills specifically. Terry also mentioned two Rail Antitrust Bills including HR 3318 with seven cosponsors and S 3612 which has just been introduced. These bills address lifting the antitrust immunity of railroads. Another bill is S 3742 which is a Rail Infrastructure Bill with nine cosponsors. A letter was received from Charles Clark, Special Representative to the President UPRR, Idaho and Montana, addressed to the RSCC requesting support for this bill. Senator Baucus (Ranking Members of the Senate Finance Committee – committee of jurisdiction) is aware of this bill and wants to make sure it would benefit rail service everywhere, not just in high population areas or on just specific routes. The Montana Congressional delegation wants this bill, if passed, to have significant application for use by Montana rail customers, the RSCC, and Montana shortlines in the pursuit of Montana commerce. This bill is significant in the sense that this is the first time in the over 100 years that railroads have come to Congress looking for financial support. The railroads are also coming to Congress at a time when the nation's railroads are showing record profits and continuing capacity shortages.

#### **5.0 Develop Plan as per HB 769 2(b) “develop a comprehensive and coordinated plan to increase rail service competition in Montana.”**

Evan Barrett requested this agenda item to emphasize the RSCC's responsibility in developing a plan for Montana's legislature. He postulated that the plan does not have to be completed by the time the legislature meets in January of 2007 because the RSCC is a permanent body and is just in its first year of operation, but the Council needs to act expeditiously and as thoroughly as possible. The idea is to get the plan done, but be sure to do it right.

Evan mentioned that there was funding for FY 2007 that would allow a Request for Proposal to be issued to prepare the plan. Terry's information and work will establish the planks to be used in preparing the plan. Whiteside & Associates will provide assistance to those preparing a plan. Terry and Evan expect the Council will be ready to issue the RFP by the end of this year.

Rep. Tom McGillvray agreed that the plan need not be completed by January, but noted he needs to make a report to the Economic Affairs Committee on September 11<sup>th</sup> as to the progress of the RSCC. Terry Whiteside or Mike O'Hara may be available to assist Tom with the report.

Sen. Ken Hansen noted that the survey project would be a step forward; Sen. Hansen said the Legislature tends to dislike surveys so the Council must explain the need for the survey and report progress on action items and plans.

#### **6.0 Administrative Update – MEDS**

Gloria O'Rourke thanked the Council for the opportunity to work with them. A listserv is in place to inform the general public and interested groups of the RSCC's activities. Whiteside and Associates powerpoint file will be placed on the website at <http://www.rscclt.gov> along with the minutes of this meeting.

#### **7.0 Legislative Update - Potential State Legislative Activity (Evan Barrett)**

##### **7.1 Location of Council and Terms of Council Members**

In the RSCC statute, terms were not listed for Council members. In the next session, Evan suggested the statute be amended to indicate revolving terms and phase them in as is typically

done. Further, he said that the Governor's Office would like legislation in which the Council is transferred to the Department of Transportation for administrative support. He indicated that the Governor's Office generally likes to have these functions with a department rather than the Governor's Office. This change would not alter the nature of the council except the attachment for administrative assistance.

Both changes could be made within the same bill.

### **7.2 Continuing appropriation for administration**

Evan noted RSCC appropriations were in the bill itself when it was passed. For future reference, the appropriation language in that bill becomes archaic after this cycle. Evan will talk with Budget Director David Ewer to see about placing RSCC appropriations into HB 2 so funding becomes a continuing obligation of state government. The council needs to determine between now and the budget deadline of November 15<sup>th</sup> if the figure of \$50,000 per year is sufficient.

Rep. McGillvray suggested adding a council member with coal shipping expertise so that coal shipping issues may be addressed as well. Evan said they would take that under consideration.

## **8.0 Rail Updates**

### **8.1 Union Pacific (Evan Barrett)**

Because of the importance of UP operations in the area and upon the request of the local legislative delegation, Butte Silver Bow local government and the Port of Montana, Governor Schweitzer called UP President James Young and had a conversation with him regarding UP continuing to serve the Port of Montana. As a result of that conversation, UP indicated they will continue to maintain service in Montana for the time being.

Evan handed out a letter from Charlie Clark of UP that was sent to George Paul of the Port of Montana discussing a meeting held in Butte about a week ago. The letter indicated UP will continue to work with the Port of Montana in Butte and requested the Council's support for Senate Bill 3742 (see 4.4 above.) This bill would provide tax incentives and other changes for both railroads and rail shippers to encourage further investment in rail facilities. Charlie Clark's letter also included an article from the Montana Standard announcing UP's decision to serving Montana.

George Paul thanked the Governor and the Governor's Office of Economic Development, the entire Butte legislative delegation as well as the Council for actively supporting the Port of Montana and becoming involved in the UP issue. George said UP expressed great appreciation for the collective message they received: Montana wants UP to remain in Montana. The Port of Montana is moving forward and developing a strategy to create more business opportunities for the area.

### **8.2 Canadian Pacific (Larry Bonderud)**

Larry Bonderud reported that CP is alive and well with \$254 million in last quarter earning reports. There are plans to improve the facilities at Coutts in Alberta. There are no plans for the interchange between CP and the BNSF line from Lethbridge to the south other than routine maintenance. Units are being held in Shelby as BNSF tries to work out the interchange. Larry reported more products are coming down than going north.

### **8.3 Montana Rail Link (Evan Barrett)**

Nothing new to report at this time.

### **8.4 BNSF Railway (Barbara Ranf)**

Barbara Ranf began her BNSF report with the results of public meetings held in Wolf Point, Havre and Great Falls. Barbara said BNSF received good feedback and is planning additional forums. BNSF needs to build understanding with agriculture producers and improve communications.

Regarding the status of the Great Falls to Helena rail and based on a study conducted in 2005 that indicated the potential for Canadian traffic in the future, BNSF decided to not abandon that section of rail at this time.

BNSF has committed to work with the STB regarding the fuel charge hearing. Barbara offered to present a formal presentation the issue in the future.

Due to resurgence in the use of rail, Barbara shared the following statistics:

- Freight transportation demand expected to double by 2025 with trans-pacific trading to triple. Fourteen million containers are now on the west coast which will grow to 84 million containers by 2025.
- Western coal production may grow from 450 million tons to 900 million tons.
- In Montana, 3,677 cars were used to ship agricultural products in the first quarter of 2005. In the first quarter of 2006, the number has grown to 5,646 carloads.
- BNSF has experienced a 144% increase cost in fuel since 2001.
- \$2.6 billion is being invested in network improvements and new locomotives
- In 1995 BNSF had 7 million unit cars and now have 10 million unit cars
- BNSF added about 150 coal trains in the last decade
- A joint venture with UP in Wyoming where \$100 million is being spent to construct additional tracks to handle coal transport
- BNSF employs 2,200 people in Montana with a payroll of 106 million, plus benefits.

Discussion:

Sen. Ken Hansen expressed concern, talking about the Helena-Great Falls rail line, for the Rails to Trails program as once the rails are gone, they are not brought back.

Evan asked Barbara to take back to her superiors that even though a line may not be abandoned, the track is often allowed to deteriorate and it eventually leads to a *de facto* abandonment. The entire length of the line needs to be maintained during extended periods of inactivity.

Questions were asked regarding BNSF plans to invest in additional track and why cooperatives are required to purchase cars. Barbara will investigate these questions and report back to the Council.

Larry Bonderud described a vision in which BNSF and UP would foster a cooperative relationship which would allow for mutual investments in infrastructure to sustain railroads and pay for improvements. Working together, railroad companies could build joint ventures and build mutual best interests. This joint approach has already been successful in Wyoming, Seattle to Los Angeles, etc. At some points railroads even have common dispatchers.

RSCC members agreed this vision is not out of the realm of possibility and that RSCC could be a facilitator for this kind of communication. The item will be placed on the next RSCC meeting agenda.

Evan pointed out that the railroads are potential customers for diesel made from coal; UP is the largest diesel consumer in the nation with BNSF not far behind. If the proper off take agreements from coal to liquid plants could be arranged, there is great potential for railroads to be strong customers.

## **8.5 Central Montana Railroad (Carla Allen)**

Carla Allen reported the CM rail has been busy as a good harvest means good business. Car loadings are up, the rail contract business continues to do well, i.e., the Charlie Russell Choo Choo. CMR is currently working on economic development projects and is in contact with the American Short Line Association to explore taking advantage of tax credits to short lines. CM, as well as 24 other small rail lines, do not fit the mold for those tax credits as they are non-profit. One option is to allow marketability of tax credits.

### **8.6 Watco, Yellowstone, Mission Valley, others (Steve Sheldon)**

Steve Sheldon reported no additional updates since the last RSCC meeting. The status of the Scobey line remains the same and is still out of service. There has been no word regarding a steering committee as was discussed in the Scobey meeting eight months before.

## **9.0 Next Council Meeting**

### **9.1 Meeting Date and Location**

Port of Montana is inviting the RSCC to meet in Butte. The date that worked best for everyone is September 27<sup>th</sup>.

### **9.2 Agenda**

Items identified for the next meeting include:

- RSCC serving as a facilitator to foster cooperative relationships between railroads
- Taxation subcommittee update
- Budget of \$50,000 adequate for RSCC?
- Transportation subcommittee update
- Letter from Dr. Daniel Fiehrer regarding abandoned line between Great Falls and Helena
- Update on September 11<sup>th</sup> Interim Committee presentation

## **10.0 Comments or Issues from Council Members**

Chairman O'Hara requested a reversal of agenda item 10.0 and 11.0.

Evan Barrett described the potential for a branch line from the Bull Mountain Mine south of Roundup to Broadview to hook on to the BN line. The Bull Mountain Mine's active under ground coal mine is moving coal by truck to Lockwood and then on to rail – which is a very expensive process. Contract negotiations are in progress and look favorable in terms of both the rail and the contract coal sales. Due to the foreseen increase in coal sales, it is expected construction will begin on a line.

A suggestion was made by Rep. Tom McGillvray for Chairman O'Hara to write a letter to Bull Mountain Energy to offer encouragement and support as needed to facilitate the line construction process. Evan Barrett motioned, Russell Hobbs seconded, motion passed unanimously.

Evan provided background information and an update on the Otter Creek tracts. The Otter Creek tracts were deeded to the state from the federal government as part of a *quid pro quo* for the New World Mine near Yellowstone Park to give up rights to develop gold there due to concerns of acid drainage into the park. As an outcome, the State of Montana received large tracts of coal from the US Government. Great Northern Properties, a private company, shares in the tracts in a checkerboard ownership. The state has a cooperative agreement with Great Northern Properties on the development of the tracts and also an agreement with the Northern Cheyenne tribe on labor issues and several other items regarding the development of the Otter Creek tracts. As a co-developer with Great Northern Properties and due to the checkerboard layout, development will have to move forward working together.

At a recent Land Board meeting, the Land Board received pressure to put Otter Creek coal up for bid. Great Northern Properties said they were not ready to do that as the coal would be devalued as the rail is not in place or looking "real." Because the coal is in the School Trust, the state is obligated by the Constitution to maximize the return for the schools of Montana. Thus the state must consider the value issues brought forth by Great Northern Properties. According to Great Northern Properties, the situation is on at least a six month holding pattern. The Tongue River Rail has been proposed for about 20 years and would run from Miles City, through Otter Creek into Decker and hook into BNSF. There is a concern that the route may not flow coal out of Montana but open a way to move Wyoming coal on a shorter route to market through Montana. BNSF has said they would not do this, but it

remains a concern to some. The railroad appears to be permitted by STB for the northern part of the route while the southern half of the route is still pending.

Evan said a representative from the Laborers Union came forth and presented a scenario dealing with a different rail developer. This plan would develop a route from Otter Creek to the south and not connect to Miles City (called the Otter Creek South Railroad) and move Montana coal from Otter Creek through Wyoming. That would eliminate any danger of benefiting Wyoming coal over Montana's coal.

There are many complexities in the issue but a lot of interest and ongoing discussion.

A comment made from the audience was that there are about 16 port authorities in the state that could own their own railroads and could be used to facilitate rail support and collaboration.

#### **11.0 Formal Public Comment Period**

While there were several comments from the public during the meeting, there were no additional comments from the public at this time.

#### **12.0 Adjournment**

Larry Bonderud and Lorette Carter were thanked for hosting the RSCC meeting.

Gloria will send travel vouchers to the RSCC members.

Evan moved to adjourn the meeting; Larry Bonderud seconded, motion passed.

RSCC members toured the Port of Northern Montana facilities after the meeting.